

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.1779 of 2016
and
W.M.P.No.1607 of 2016

Singai N.Muthu

... Petitioner

Vs.

1. The Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Secretariat,
Chennai - 600 009.
2. The Member Secretary,
Local Planning Authority,
Sivanandha Colony,
Coimbatore - 641 012.
3. The Director of Town and Country Planning,
807, Anna Salai,
Chennai - 600 002.
4. The Commissioner,
Corporation of Coimbatore,
Coimbatore - 641 001.
5. The District Collector cum
Chairman of Local Planning Authority,
Coimbatore District,
Coimbatore - 641 018.
6. The Deputy Director of Town and Country Planning,
Coimbatore Region,
Dr.Nanjappa Road,
Corporation Shopping Complex,
Coimbatore - 641 018.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus, to call for the records of the 2nd respondent in respect of Vilankurichi Draft Detailed Development Plan No.6 under reference No.Na.Ka.No.199/90/VuThiKu-3, dated 22.04.1991 forwarded for consent to the 3rd respondent including that of Na.Ka.No.2854/12/VuThiKu-3, dated 03.09.2012 issued by the second respondent and quash the same and direct all the

respondents to release the lands of the petitioner admeasuring 32.675 cents comprised in S.No.282/1 Pat, Vilankurichi Village, Coimbatore North Taluk, Coimbatore Corporation from the proceedings of preparation of Vilankurichi Detailed Development Plan No.6 in accordance with Section 38(b) of the Tamil Nadu Town and Country Planning Act, 1971.

For Petitioner : Mr.P.Wilson
Senior Counsel for
M/s.Richardson Wilson

For Respondents : Mr.STS.Murthy
Additional Advocate General
assisted by Mr.V.Shanmuga Sundar
Special Government Pleader
for R1, 3, 5 & 6
Mr.R.Vijayakumar for R2
Mr.K.Magesh
Standing Counsel for R4

O R D E R

This writ petition has been filed for issuance of a writ of certiorarified mandamus to quash the resolution of the second respondent dated 22.4.1991 and the entire proceedings in Na.Ka.No.2854/12/VuThiKu-3, dated 03.09.2012 and to direct the respondents to release the land of the petitioner measuring an extent of 32.675 cents in S.No.282/1 Part, Vilankurichi Village, Coimbatore North Taluk, Coimbatore.

2. Heard Mr.P.Wilson, learned Senior Counsel appearing for M/s.Richardson Wilson, for the petitioner, Mr.STS.Murthy, learned Additional Advocate General, assisted by Mr.V.Shanmuga Sundar, learned Special Government Pleader appearing for the respondents 1, 3, 5 and 6, Mr.R.Vijayakumar, learned counsel appearing for the second respondent and Mr.K.Magesh, learned Standing counsel appearing for the fourth respondent and perused the materials available on record.

3.The case of the petitioner is that the property in S.No.282/1 Part in Vilankurichi Village was purchased by his mother, vide registered sale deed dated 29.11.1990. Since then, she was in possession and enjoyment of the property and by virtue of settlement deed dated 04.08.2011, the petitioner became the absolute owner and he has been in possession and enjoyment of the property.

4. The petitioner would state that the second respondent prepared a Detailed Development Plan No.6, for the purpose of formation of B4-B4 Scheme Road in Vilankurichi Village and based on the resolution dated 17.12.1990, a Draft Map No.2 had been

prepared. The said Draft Map was approved by the Deputy Director, Coimbatore, Nilgiris Region by resolution dated 04.04.1991. Subsequently, under Rule 7 of the Preparation, Publication and Sanction of Detailed Development Plan (Chennai Metropolitan Planning Area) Rules, 1975, a consultation process was convened and thereafter, the fifth respondent passed a Resolution No.33, dated 13.5.1991, to seek approval from the third respondent under Section 25 of the Tamil Nadu Town and Country Planning Act.

5. According to the petitioner, after submitting the draft plan by the second respondent, the third respondent has not taken any further action and the publication was effected as per Section 27(1) of the Tamil Nadu Town and Country Planning Act.

6. The learned Senior Counsel appearing for the petitioner, placing reliance on the decisions of this Court reported in 2014(6)CTC60= 2014(4)LW469=MANU/TN/1572/2014 (S.Kanagam Achi Vs.The Director,Town & Country Planning), 2010(2)CTS 510 (V.Nagamani and another Vs. The Director of Town & Country Planning, Chennai and another), 2008(2) MLJ 184 (K.S.Kamakshi Chetty and Others Vs. Commissioner, Aruppukottai Municipality, Aruppukottai and another) and 2007 (3) MLJ 647 (Casa Granade Private Ltd., rep.by its Director M.Arun Kumar, Chennai Vs. Chennai Metropolitan Development Authority (CMDA), rep.by its Member Secretary, Chennai), submitted that if the lands are not acquired within a period of three years, the entire proceedings shall be deemed to have been lapsed under Section 38(b) of the Act.

7. The learned Additional Advocate General by referring the counter affidavit filed by the second respondent, submitted that layout approval was granted for the properties of the petitioner in S.No.282/1, on the condition that if the scheme road is formed, the applicant shall handover the scheme road to the fourth respondent / local body with gift deed and that there is no time limit to enforce the Detailed Development Plan and he prayed for dismissal of this writ petition.

8. As rightly contended by the learned Standing Counsel for the fourth respondent, the power to reclassify the land is vest with the Government. With regard to release of land as per Section 38 of the Act, the issue was considered by the Hon'ble Supreme Court in the case of Pillayar P.K.V.K.N. Trust vs. Karpaga N.N.U.S and Ors. (supra), and it has been held as follows:-

"26. Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 runs as under:

"38. Release of land.—If within three years from the date of the publication of the notice in the Tamil Nadu Government Gazette under Section

(a) no declaration as provided in sub-section (2) of Section 37 is published in respect of any land reserved, allotted or designated for any purpose specified in a regional plan, master plan, detailed development plan or new town development plan covered by such notice; or

(b) such land is not acquired by agreement, such land shall be deemed to be released from such reservation, allotment or designation."

27. In view of the admitted position that the land is not acquired by agreement till the date of the judgment of the High Court, the deeming clause would certainly come into force and, therefore, the land concerned would certainly be deemed to have been released."

9. I had an occasion to consider a similar issue in M.Amsavalli Vs. The Director of Town and Country Planning (supra) and by following the principles laid down in K.S.Kamakshi Chetty and others vs. Commissioner, Aruppukottai Municipality, Aruppukottai and another [2008 (2) MLJ 184] and P.Babu V. The Director, Town & Country Planning, Chennai [CDJ 2017 MHC 2551], held that since no steps have been taken by the respondents either to acquire the land or make publication within a period of three years from the date of notification, lands are deemed to have been released from the acquisition as per the deeming provision of Section 38 of the Act.

10. The issue arises for consideration in this writ petition is no longer res-integra, as this Court in the above decisions, has held that if the respondents failed to acquire the land of the owners, pursuant to the resolution of the notification, within a period of three years, the entire proceedings would be deemed to have been lapsed.

11. In my considered opinion, the decisions referred supra, would squarely apply to the matter on hand. In that view of the matter, the respondents are directed to release the lands of the petitioner situated in Survey No.282/1 Part, Vilankurichi Village, Coimbatore North Taluk, Coimbatore, by passing a Specific Order within a period of two weeks from the date of receipt of a copy of this order and communicate the same to the petitioner.

12. In the light of the above settled law, the petitioner is entitled to succeed in this writ petition. Accordingly, this writ petition is allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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To

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Coimbatore - 641 018.
- +1 CC to Govt. Pleader sr 52375.
+1 CC to M/s. Richardson Wilson, advocate sr 51752.
+1 CC to Mr. K. Magesh, Advocate sr 51742.

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SP(30/08/2018)